

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10708 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MEHBOOB IQBALBHAI MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.C.C.Bhalja, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL JUDGEMENT

1. In this writ petition, under Article 226 of the Constitution of India, the detention order dated 12.5.1998 passed by the Commissioner of Police, Ahmedabad City, under Section 3(2) of the Prevention of Anti-social Activity Act (for short 'PASA') is under challenge with prayer to set aside the aforesaid order and to release the petitioner from illegal detention in pursuance of the

impugned order.

2. The detaining Authority considered four registered cases of theft of Auto-vehicles. These cases were registered under Section 379 of the I.P.Code against the petitioner. He also considered the statements of two confidential witnesses and from the aforesaid material he was satisfied that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA and his activities are prejudicial for maintenance of public order.

3. This order has been challenged on the sole ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

4. Technically, as the statute PASA defines a dangerous person under Section 2(c), it can be said that the petitioner committed theft of auto-vehicles on four occasions in the year 1998 and thus he repeated commission of theft, an offence punishable under Chapter : XVII of the I.P.Code. Thus, technically he could be declared dangerous person, but a dangerous person or abnoxious person or a person who is not liked by the detaining Authority cannot be placed under the preventive detention unless the activities of such person are prejudicial for maintenance of public order.

5. From the grounds of detention it is not indicated whether on four occasions when cases under Section 379 I.P.Code were registered against the petitioner he was caught red-handed at the spot while committing theft of such vehicles or such vehicles were recovered from him or that such cases were registered on the strength of circumstantial evidence. Unless it is specifically disclosed in the grounds of detention that the petitioner committed theft of stolen vehicles in open in presence of public and he was arrested at the spot he can, by no stretch of imagination, be said to have disturbed public order by his anti-social activity. For committing theft of vehicles he has been booked under relevant Sections of Indian Penal Code. If those cases are proved against him after full trial he shall be punished. Thus, these cases were the cases creating law and order problem for which effective remedy was taken against the petitioner.

6. So far as the statements of two confidential witnesses are concerned even on the face value of these statements it cannot be said that public order was disturbed by the two complained activities of the petitioner which were repeated on 1.4.1998 and 28.3.1998.

The detaining Authority did not apply his mind to the statement of first witness nor did he care to ascertain what was the nature of transaction between the petitioner and the witness over which the dispute arose and subsequent incident followed. Similar is the case with the statement of witness No.2. Suspicion in the mind of the witness No.2 was totally imaginary and this aspect was also not considered by the detaining Authority.

7. Thus, there was no material, what to say, of sufficient material before the detaining Authority for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. As such the detention order passed against the petitioner is rendered illegal, the consequence of which is that the petition is bound to succeed.

8. The writ petition is, therefore, allowed. The impugned order of detention dated 12.5.1998 is quashed. The petitioner shall be released forthwith unless he is wanted in some other case.

sd/-

Date : February 04, 1999 (D. C. Srivastava, J.)

sas